

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Joseph Duane Gustafson, Jr.,

Case No. 19-CV-1963 (SRN/ECW)

Petitioner,

v.

ORDER

William Bolin and Keith Ellison,

Respondents.

This matter is before the Court on three motions of petitioner Joseph Duane Gustafson, Jr. First, Gustafson requests a certificate of appealability (“COA”) from the denial of his petition for a writ of habeas corpus. *See* Doc. No. 32; 28 U.S.C. § 2253(c). The Court has already explained that it does not believe that any issue raised in Gustafson’s petition to be debatable among reasonable jurists. *See* Doc. No. 29 at 27 (citing *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994)). Nothing in Gustafson’s most recent motion for a COA convinces the Court that its earlier finding was incorrect. Accordingly, Gustafson’s motion for a COA will be denied. This denial does not preclude Gustafson from seeking a COA from the United States Court of Appeals for the Eighth Circuit.

Second, Gustafson requests *in forma pauperis* (“IFP”) status on appeal from the dismissal of this action. *See* Doc. No. 38. This Court just again declined to issue Gustafson a certificate of appealability, but “[t]he standard for granting an application for leave to proceed *in forma pauperis* . . . is a lower standard than the standard for certificates of appealability.” *Moore v. Haas*, Civil No. 2:13-CV-12225, 2013 WL 5819593, at *6 (E.D.

Mich. Oct. 29, 2013); *accord United States v. Youngblood*, 116 F.3d 1113, 1115 (5th Cir. 1997). Gustafson's appeal is doubtful, but it is not frivolous as the Supreme Court has defined that term, and he qualifies financially for IFP status. Accordingly, Gustafson's IFP application will be granted.

Third, Gustafson requests appointment of counsel on appeal. *See* ECF No. 33. Because proceedings have concluded before this Court, any motion for appointment of counsel is better directed towards the Eighth Circuit, which may appoint counsel on behalf of Gustafson should that court conclude that appointment would be in the interests of justice. In the meantime, however, Gustafson's motion for appointment of counsel will be denied without prejudice.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. The motion for a certificate of appealability of petitioner Joseph Duane Gustafson, Jr. [Doc. No. 32] is DENIED.
2. Gustafson's motion for appointment of counsel [Doc. No. 33] is DENIED WITHOUT PREJUDICE.
3. Gustafson's application to proceed *in forma pauperis* on appeal [Doc. No. 38] is GRANTED.

Dated: April 8, 2020

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge